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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/610,229	07/05/2000	Roy Malcolm Moody	37261.p058	4990

7590 04/05/2002

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EXAMINER

COHEN, CURTIS A

ART UNIT PAPER NUMBER

3634

DATE MAILED: 04/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/610,229

Applicant(s)
Moody et al

Examiner
Curtis Cohen

Art Unit
3634



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jan 16, 2002
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 10-17 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 10-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☒ All b) ☐ Some* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other _____

Art Unit: 3634

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3, lines 4-5, the positive recitation of the window sash in line 5 is indefinite since the window sash is functionally recited, (i.e., the sash is not a required element of the claim), in the independent claim. Therefore, there is a discrepancy whether or not the window sash is a required element of the independent claim.

Claims 3 and 9, in claim 3, applicant functionally recites the locking arrangement. However, in claim 9, the locking arrangement is positively recited. Therefore, there is a discrepancy whether or not the locking arrangement is a positively required element of the claim. If so, then the functional language "for engaging with a locking arrangement" in claim 3, line 4, should be positively recited by deleting the term "for."

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 3634

A person shall be entitled to a patent unless --

Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Vetter #4,497,135.

Vetter teaches a window sash having an opening mechanism. The opening mechanism includes a threaded member 49, a drive mechanism 65, a threaded element 41 and a hinge 35. A locking bar is provided by member 60 shown in Figure 1. Vetter further teaches a lost motion device as described in column 3, line 35 to column 4 line 40.

Allowable Subject Matter

Claims 10-17 are allowed.

Response to Arguments

Applicant's arguments filed January 16, 2002 have been fully considered but they are not persuasive.

Regarding the Section 112 rejection to claim 3, although a marked-up copy was received by the Office, a clean copy of the changes was never received. Nevertheless, the marked-up copy does not present changes that solve the indefinite issues with the claim. Applicant might consider changing claim 3, line 5, as originally filed, from "mounted" to --mountable--.

Regarding the argument that Vetter fails to disclose or teach that the hinge can actually form part of the window operator, this appears to be a point of contention. Comparing the claim language to the teachings of Vetter it is clear that the hinge of Vetter is connected to the coupling such that movement in the coupling 40 moves the hinge 35. That is all that is required of the claim. If the hinge 35 is connected to the motor and the mechanism that is moved by the motor,

Art Unit: 3634

then it is certainly reasonable to state that the hinge is part of the window operator. But for the hinge, the window would not move.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis Cohen whose telephone number is (703) 308-2106.


The fax phone number for this Group is (703) 305-7687.

Art Unit: 3634

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.

C. Cohen

April 4, 2002



Curtis A. Cohen
Primary Examiner